

**STATE OF TENNESSEE**  
OFFICE OF THE  
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February 25, 2004

Opinion No. 04-029

Highway Storm Drainage Maintenance

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**QUESTIONS**

1. If a city has a fully-executed city maintenance contract, who is responsible for the storm drainage maintenance on state routes inside city limits?
2. If a city does not have a fully-executed city maintenance contract, but is organized for the care of its own streets (has a street department), who is responsible for the storm drainage maintenance on state routes inside city limits?
3. What are the penalties and liabilities that could be incurred by the state should they perform storm drainage work in cities with fully-executed city maintenance contracts?
4. What are the penalties and liabilities that could be incurred by the state should they perform storm drainage work in cities without fully-executed city maintenance contracts?

**OPINION**

The Tennessee Department of Transportation has been authorized and required to maintain city streets used as state highways. In most, if not all, circumstances, that responsibility has been delegated to the municipalities. Even in the circumstances where the state has delegated this responsibility by contract, the state, in the discretion of its officers, can still perform maintenance work on highway storm drainage facilities. A city may have the right to file a complaint in the Tennessee Claims Commission against the State of Tennessee if monetary losses arise from a contract breach. However, the facts given do not suggest such losses, as the road maintenance agreements only provide for the city to be reimbursed by the state for the cost of maintaining the roadways. As long as the maintenance works are undertaken by a state officer within that officer's power of discretion, and absent clear proof of fraud or corruption, courts of general jurisdiction are not empowered to restrain such works by way of injunction.

## ANALYSIS

Under the authority of T.C.A. §54-5-201(a), the Tennessee Department of Transportation **" shall construct, reconstruct and improve streets and maintain the streets in municipalities over which traffic on state highways is routed; or enter into contracts with the municipalities in the state relative to the same ...."** [Emphasis added]

When a municipality is organized for the care of its own streets, T.C.A. §54-5-203 states that the municipality "may" perform its own maintenance on state highways within the municipality and be reimbursed by the Department of Transportation, conditioned upon the Department's approval. Where the state has delegated the responsibility for highway maintenance to a city, the standard Contract for Maintenance of State Highways Through Municipalities incorporates the "Guidelines Covering Maintenance Of State Roads Through Municipalities". This guidelines document states:

"The following items are the responsibility of the Municipalities and are not eligible for State maintenance reimbursement:

... 4. Storm drainage".

There is, then, little question that a city that enters such a contract takes up the responsibility for maintaining the storm drainage facilities.

If no such maintenance contract has been executed, it is assumed for the purpose of this opinion that the state route has been constructed or improved after full approval of the standard written proposals between the Department of Transportation and the municipality. Upon acceptance of that standard proposal, the municipality assumes responsibility for maintaining all areas of the public way outside the roadway surface. The Department of Transportation remains responsible for maintaining the pavement from curb to curb where curbs exist or the full width of the roadway where no curbs exist on "non-access control" roads. However, on "full access control" roads, the Department of Transportation keeps the responsibility for maintaining the whole project. Based upon that agreement, storm drainage facilities serving the state route are to be maintained by the Department of Transportation if the state route is a controlled-access road. If the state route is a non-controlled-access road, then the Department of Transportation has agreed to delegate the maintenance of items such as storm drainage to the city.

It is foreseeable that the Department of Transportation could agree to delegate the responsibility for storm drain maintenance to a city, then occasionally direct state forces to perform that work, either for cause or by inadvertence. The statute authorizing that contract does not grant the city the right to sue the state or to make any claim seeking breach of contract damages. The city may have the right to file a Claims Commission action against the State if the city were to incur any monetary losses based upon a breach of the contract. The contracts in question, though, and T.C.A. §54-5-203 provide only for the city's costs to be reimbursed by the state. If the state performs some of the maintenance tasks covered in the agreement, there is no cost to the city to be reimbursed, and

the city suffers no monetary loss.

Further, the city could not likely get an injunction restraining the state from performing the described work. The Department of Transportation, through its commissioner or officers, has the authority to maintain its highways on its own or to allow municipalities to maintain them. T.C.A. §54-5-201-203. Whether there is a fully-executed city maintenance contract or not, if a state officer, in his or her discretion, undertakes storm drainage work on a state route, a court cannot intervene and restrain such action, absent a clear showing of fraud, abuse of power, or corruption. *North British & Mercantile Co. v. Craig*, 106 Tenn. 621, 62 S.W. 155 (1901); *Barnes v. Ingram*, 217 Tenn. 363, 397 S.W.2d 821 (1966); *City of Knoxville v. Civil Service Merit Board*, 705 S.W.2d 674 (Tenn.App., 1985).

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